



General Assembly

January Session, 2001

Amendment

LCO No. 8881

Offered by:

SEN. JEPSEN, 27th Dist.

SEN. SULLIVAN, 5th Dist.

SEN. COLEMAN, 2nd Dist.

To: Subst. House Bill No. 6890

File No. 862

Cal. No. 565

***"AN ACT CONCERNING BUSINESS CORPORATIONS AND
NONSTOCK CORPORATIONS."***

1 After line 1350, add the following and renumber the remaining
2 section accordingly:

3 "Sec. 47. Section 33-756 of the general statutes is repealed and the
4 following is substituted in lieu thereof:

5 [(a) A director shall discharge his duties as a director, including his
6 duties as a member of a committee]

7 (a) Each member of the board of directors, when discharging the
8 duties of a director, shall act: (1) In good faith; [(2) with the care an
9 ordinarily prudent person in a like position would exercise under
10 similar circumstances; and (3)] and (2) in a manner [he] the director
11 reasonably believes to be in the best interests of the corporation.

12 (b) The members of the board of directors or a committee of the

13 board, when becoming informed in connection with their decision-
14 making function or devoting attention to their oversight function, shall
15 discharge their duties with the level of due care that a person in a like
16 position would reasonably believe appropriate under similar
17 circumstances.

18 (c) In discharging board or committee duties, a director, who does
19 not have knowledge that makes reliance unwarranted, is entitled to
20 rely on the performance by any of the persons specified in subdivision
21 (1) or (3) of subsection (e) of this section to whom the board may have
22 delegated, formally or informally by course of conduct, the authority
23 or duty to perform one or more of the board's functions that are
24 delegable under applicable law.

25 [(b)] (d) In discharging [his] board or committee duties, a director,
26 who does not have knowledge that makes reliance unwarranted, is
27 entitled to rely on information, opinions, reports or statements,
28 including financial statements and other financial data, [if] prepared or
29 presented by [: (1) One or more officers or employees of the
30 corporation whom the director reasonably believes to be reliable and
31 competent in the matters presented; (2) legal counsel, public
32 accountants or other persons as to matters the director reasonably
33 believes are within the person's professional or expert competence; or
34 (3) a committee of the board of directors of which he is not a member if
35 the director reasonably believes the committee merits confidence] any
36 of the persons specified in subsection (e) of this section.

37 (e) A director is entitled to rely, in accordance with subsection (c) or
38 (d) of this section, on: (1) One or more officers or employees of the
39 corporation whom the director reasonably believes to be reliable and
40 competent in the functions performed or the information, opinions,
41 reports or statements provided; (2) legal counsel, public accountants or
42 other persons retained by the corporation as to matters involving skills
43 or expertise the director reasonably believes are matters (A) within the
44 particular person's professional or expert competence, or (B) as to
45 which the particular person merits confidence; or (3) a committee of

46 the board of directors of which the director is not a member if the
47 director reasonably believes the committee merits confidence.

48 [(c) A director is not acting in good faith if he has knowledge
49 concerning the matter in question that makes reliance otherwise
50 permitted by subsection (b) of this section unwarranted.]

51 [(d)] (f) For purposes of sections 33-817, 33-830, 33-831, 33-841 and
52 33-844, a director of a corporation which has a class of voting stock
53 registered pursuant to Section 12 of the Securities Exchange Act of
54 1934, as the same has been or hereafter may be amended from time to
55 time, in addition to complying with the provisions of subsections (a) to
56 [(c)] (e), inclusive, of this section, shall consider, in determining what
57 [he] the director reasonably believes to be in the best interests of the
58 corporation, (1) the long-term as well as the short-term interests of the
59 corporation, (2) the interests of the shareholders, long-term as well as
60 short-term, including the possibility that those interests may be best
61 served by the continued independence of the corporation, (3) the
62 interests of the corporation's employees, customers, creditors and
63 suppliers, and (4) community and societal considerations including
64 those of any community in which any office or other facility of the
65 corporation is located. A director may also in [his] the director's
66 discretion consider any other factors [he] the director reasonably
67 considers appropriate in determining what [he] the director reasonably
68 believes to be in the best interests of the corporation.

69 [(e)] (g) A director is not liable for any action taken as a director, or
70 any failure to take any action, if [he] the director performed the duties
71 of [his] the director's office in compliance with this section.

72 Sec. 48. Section 33-757 of the general statutes is repealed and the
73 following is substituted in lieu thereof:

74 (a) A director who votes for or assents to a distribution [made in
75 violation of section 33-687 or the certificate of incorporation] in excess
76 of what may be authorized and made pursuant to subsection (a) of
77 section 33-687 is personally liable to the corporation for the amount of

78 the distribution that exceeds what could have been distributed without
79 violating said [section or the certificate of incorporation if it is
80 established that he did not perform his duties in compliance with
81 section 33-756. In any proceeding commenced under this section, a
82 director has all of the defenses ordinarily available to a director]
83 subsection (a) if the party asserting liability establishes that when
84 taking the action the director did not comply with section 33-756, as
85 amended by this act.

86 (b) A director held liable under subsection (a) of this section for an
87 unlawful distribution is entitled to: [contribution: (1) From] (1)
88 Contribution from every other director who could be held liable under
89 subsection (a) of this section for the unlawful distribution; and (2)
90 recoupment from each shareholder [for] of the pro rata portion of the
91 amount of the unlawful distribution the shareholder accepted knowing
92 the distribution was made in violation of subsection (a) of section 33-
93 687. [or the certificate of incorporation.]

94 (c) A proceeding [under this section] to enforce the liability of a
95 director under subsection (a) of this section is barred unless it is
96 commenced within two years after the date on which the effect of the
97 distribution was measured under subsection (e) or (g) of section 33-687
98 or as of which the violation of subsection (a) of section 33-687 occurred
99 as the consequence of disregard of a restriction in the certificate of
100 incorporation. A proceeding to enforce contribution or recoupment
101 under subsection (b) of this section is barred unless it is commenced
102 within one year after the liability of the claimant has been finally
103 adjudicated under subsection (a) of this section.

104 [(d) For purposes of this section, a director shall be deemed to have
105 voted for a distribution if such director was present at the meeting of
106 the board of directors or committee thereof at the time such
107 distribution was authorized and did not vote in dissent therefrom, or if
108 such director consented thereto pursuant to section 33-749.]

109 Sec. 49. Section 33-765 of the general statutes is repealed and the

110 following is substituted in lieu thereof:

111 (a) An officer, [with discretionary authority shall discharge his
112 duties under that authority] when performing in such capacity, shall
113 act: (1) In good faith; (2) with the level of due care [an ordinarily
114 prudent] that a person in a like position would reasonably exercise
115 under similar circumstances; and (3) in a manner [he] the officer
116 reasonably believes to be in the best interests of the corporation.

117 (b) In discharging [his] those duties, an officer, who does not have
118 knowledge that makes reliance unwarranted, is entitled to rely on: (1)
119 The performance of properly delegated responsibilities by one or more
120 employees of the corporation whom the officer reasonably believes to
121 be reliable and competent in performing the responsibilities delegated;
122 or (2) information, opinions, reports or statements, including financial
123 statements and other financial data, [if] prepared or presented by [:
124 One] one or more officers or employees of the corporation whom the
125 officer reasonably believes to be reliable and competent in the matters
126 presented [; or (2)] or by legal counsel, public accountants or other
127 persons retained by the corporation as to matters involving skills or
128 expertise the officer reasonably believes are matters (A) within the
129 person's professional or expert competence, or (B) as to which the
130 particular person merits confidence.

131 [(c) An officer is not acting in good faith if he has knowledge
132 concerning the matter in question that makes reliance otherwise
133 permitted by subsection (b) of this section unwarranted.]

134 [(d)] (c) An officer [is not liable for any action taken as an officer, or
135 any failure to take any action, if he performed the duties of his office in
136 compliance with this section] shall not be liable to the corporation or
137 its shareholders for any decision to take or not to take action, or any
138 failure to take any action, as an officer, if the duties of the office are
139 performed in compliance with this section. Whether an officer who
140 does not comply with this section shall have liability will depend in
141 such instance on applicable law.

142 Sec. 50. Section 33-1104 of the general statutes is repealed and the
143 following is substituted in lieu thereof:

144 [(a) A director shall discharge his duties as a director, including his
145 duties as a member of a committee]

146 (a) Each member of the board of directors, when discharging the
147 duties of a director, shall act: (1) In good faith; [(2) with the care an
148 ordinarily prudent person in a like position would exercise under
149 similar circumstances; and (3)] and (2) in a manner [he] the director
150 reasonably believes to be in the best interests of the corporation.

151 (b) The members of the board of directors or a committee of the
152 board, when becoming informed in connection with their decision-
153 making function or devoting attention to their oversight function, shall
154 discharge their duties with the level of due care that a person in a like
155 position would reasonably believe appropriate under similar
156 circumstances.

157 (c) In discharging board or committee duties, a director, who does
158 not have knowledge that makes reliance unwarranted, is entitled to
159 rely on the performance by any of the persons specified in subdivision
160 (1) or (3) of subsection (e) of this section to whom the board may have
161 delegated, formally or informally by course of conduct, the authority
162 or duty to perform one or more of the board's functions that are
163 delegable under applicable law.

164 [(b)] (d) In discharging [his] board or committee duties, a director,
165 who does not have knowledge that makes reliance unwarranted, is
166 entitled to rely on information, opinions, reports or statements,
167 including financial statements and other financial data, [if] prepared or
168 presented by [: (1) One or more officers or employees of the
169 corporation whom the director reasonably believes to be reliable and
170 competent in the matters presented; (2) legal counsel, public
171 accountants or other persons as to matters the director reasonably
172 believes are within the person's professional or expert competence; or
173 (3) a committee of the board of directors of which he is not a member if

174 the director reasonably believes the committee merits confidence] any
175 of the persons specified in subsection (e) of this section.

176 (e) A director is entitled to rely, in accordance with subsection (c) or
177 (d) of this section, on: (1) One or more officers or employees of the
178 corporation whom the director reasonably believes to be reliable and
179 competent in the functions performed or the information, opinions,
180 reports or statements provided; (2) legal counsel, public accountants or
181 other persons retained by the corporation as to matters involving skills
182 or expertise the director reasonably believes are matters (A) within the
183 particular person's professional or expert competence, or (B) as to
184 which the particular person merits confidence; or (3) a committee of
185 the board of directors of which the director is not a member if the
186 director reasonably believes the committee merits confidence.

187 [(c) A director is not acting in good faith if he has knowledge
188 concerning the matter in question that makes reliance otherwise
189 permitted by subsection (b) of this section unwarranted.]

190 [(d)] (f) A director is not liable for any action taken as a director, or
191 any failure to take any action, if [he] the director performed the duties
192 of [his] the director's office in compliance with this section.

193 Sec. 51. Section 33-1105 of the general statutes is repealed and the
194 following is substituted in lieu thereof:

195 (a) A director who votes for or assents to a distribution [made in
196 violation of] in excess of what may be authorized and made pursuant
197 to sections 33-1000 to 33-1290, inclusive, as amended by this act, or the
198 certificate of incorporation is personally liable to the corporation for
199 the amount of the distribution that exceeds what could have been
200 distributed without violating said sections [or the certificate of
201 incorporation if it is established that he did not perform his duties in
202 compliance with section 33-1104. In any proceeding commenced under
203 this section, a director has all of the defenses ordinarily available to a
204 director] if the party asserting liability establishes that when taking the
205 action the director did not comply with section 33-1104, as amended by

206 this act.

207 (b) A director held liable under subsection (a) of this section for an
208 unlawful distribution is entitled to: [contribution: (1) From] (1)
209 Contribution from every other director who could be held liable under
210 subsection (a) of this section for the unlawful distribution; and (2)
211 recoupment from each recipient [for] of the pro rata portion of the
212 amount of the unlawful distribution the recipient accepted knowing
213 the distribution was made in violation of sections 33-1000 to 33-1290,
214 inclusive, as amended by this act, or the certificate of incorporation.

215 (c) A proceeding [under this section] to enforce the liability of a
216 director under subsection (a) of this section is barred unless it is
217 commenced within three years after the date on which the distribution
218 was made. A proceeding to enforce contribution or recoupment under
219 subsection (b) of this section is barred unless it is commenced within
220 one year after the liability of the claimant has been finally adjudicated
221 under subsection (a) of this section.

222 [(d) For purposes of this section, a director shall be deemed to have
223 voted for a distribution if such director was present at the meeting of
224 the board of directors or committee thereof at the time such
225 distribution was authorized and did not vote in dissent therefrom, or if
226 such director consented thereto pursuant to section 33-1097.]

227 Sec. 52. Section 33-1111 of the general statutes is repealed and the
228 following is substituted in lieu thereof:

229 (a) An officer, [with discretionary authority shall discharge his
230 duties under that authority] when performing in such capacity, shall
231 act: (1) In good faith; (2) with the level of due care [an ordinarily
232 prudent] that a person in a like position would reasonably exercise
233 under similar circumstances; and (3) in a manner [he] the officer
234 reasonably believes to be in the best interests of the corporation.

235 (b) In discharging [his] those duties, an officer, who does not have
236 knowledge that makes reliance unwarranted, is entitled to rely on: (1)

237 The performance of properly delegated responsibilities by one or more
238 employees of the corporation whom the officer reasonably believes to
239 be reliable and competent in performing the responsibilities delegated;
240 or (2) information, opinions, reports or statements, including financial
241 statements and other financial data, [if] prepared or presented by [: (1)
242 One] one or more officers or employees of the corporation whom the
243 officer reasonably believes to be reliable and competent in the matters
244 presented [; or (2)] or by legal counsel, public accountants or other
245 persons retained by the corporation as to matters involving skills or
246 expertise the officer reasonably believes are matters (A) within the
247 particular person's professional or expert competence, or (B) as to
248 which the particular person merits confidence.

249 [(c) An officer is not acting in good faith if he has knowledge
250 concerning the matter in question that makes reliance otherwise
251 permitted by subsection (b) of this section unwarranted.]

252 [(d)] (c) An officer [is not liable for any action taken as an officer, or
253 any failure to take any action, if he performed the duties of his office in
254 compliance with this section] shall not be liable to the corporation or
255 its members for any decision to take or not to take action, or any failure
256 to take any action, as an officer, if the duties of the office are performed
257 in compliance with this section. Whether an officer who does not
258 comply with this section shall have liability will depend in such
259 instance on applicable law.

260 Sec. 53. Section 52-251c of the general statutes is amended by adding
261 subsection (d) as follows:

262 (NEW) (d) The parties to any such contract or arrangement may
263 agree in writing to waive the provisions of subsection (b) of this
264 section, provided in no event shall the fee exceed thirty-three and one-
265 third per cent of the damages awarded and received by the claimant or
266 of the settlement amount received by the claimant."